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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SERENA KWAN, an Individual, On
Behalf of Herself and All Others
Similarly Situated,

Plaintiff,

v.

SANMEDICA INTERNATIONAL,
LLC, a Utah Limited Liability
Company and SIERRA RESEARCH
GROUP, LLC, a Utah Limited
Liability Company,

Defendants.

Case No.:

CLASS ACTION COMPLAINT FOR:

1. VIOLATION OF THE UNFAIR
COMPETITION LAW, Business
and Professions Code §17200 *et*
seq.; and
2. VIOLATION OF THE
CONSUMERS LEGAL
REMEDIES ACT,
Civil Code §1750 *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff Serena Kwan brings this action on behalf of herself and all others
2 similarly situated against Defendants SanMedica International, LLC and Sierra
3 Research Group, LLC and states:

4 **NATURE OF ACTION**

5 1. Defendants manufacture, market, sell and/or distribute SeroVital, an
6 over-the-counter amino acid supplement. Through an extensive, widespread,
7 comprehensive and uniform nationwide marketing campaign, Defendants promise
8 that SeroVital is clinically tested to boost human growth hormone (“HGH”) by a
9 mean of 682% for those who take it. On the front of each and every SeroVital box,
10 where consumers cannot miss it, Defendants represent that the Product is
11 “CLINICALLY TESTED” to provide a “682% MEAN INCREASE IN HGH
12 LEVELS”, which is associated with “youthful skin integrity, lean musculature,
13 elevated energy production, [and] adipose tissue distribution” (collectively, the
14 “growth hormone benefit representations” or “HGH benefit representations”).
15 Defendants’ growth hormone benefit representations are false, misleading, and
16 reasonably likely to deceive the public. The clinically tested representation is false
17 because the study Defendants cite to is clearly flawed and does not and cannot
18 serve as the basis for the representations made by Defendants. The other benefit
19 representations are also false or misleading in that Defendants have no scientific
20 support for any of these representations.

21 2. Defendants have employed numerous methods to convey their
22 uniform, deceptive growth hormone benefit representations to consumers, including
23 the front of the Product’s packaging and labeling where it cannot be missed by
24 consumers.

25 3. As a result of Defendants’ deceptive growth hormone benefit
26 representations, consumers – including Plaintiff and members of the proposed Class
27 – have been deceived into purchasing what they believed to be a Product that was
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1 shown in clinical testing to provide the represented HGH benefits, when the sole
2 study on which the HGH benefit claim is based does not test for “youthful skin
3 integrity, lean musculature, elevated energy production, [and] adipose tissue
4 distribution” and is not credible scientific support for the “682% MEAN
5 INCREASE IN HGH LEVELS” representation. Further, there is absolutely no
6 support from any credible scientific source that any of the ingredients in SeroVital,
7 alone or in combination, in the dosages found in the Product, provide the
8 represented growth hormone benefits.

9 4. Plaintiff brings this action on behalf of herself and other similarly
10 situated consumers who have purchased SeroVital to halt the dissemination of this
11 false, misleading and deceptive advertising message, correct the false and
12 misleading perception it has created in the minds of consumers, and obtain redress
13 for those who have purchased SeroVital. Based on violations of state unfair
14 competition laws (detailed below), Plaintiff seeks injunctive and restitutionary
15 relief for consumers who purchased the Product.

16 **JURISDICTION AND VENUE**

17 5. This Court has original jurisdiction over Defendants and the claims set
18 forth below pursuant to 28 U.S.C. §1332(d)(2). The matter in controversy,
19 exclusive of interest and costs, exceeds \$5,000,000 and is a class action with greater
20 than 100 class members, many of whom are citizens of a state different than
21 Defendants.

22 6. This Court has personal jurisdiction over Defendants because
23 Defendants are authorized to conduct and do business in California, including San
24 Francisco County. Defendants have marketed, promoted, distributed, and sold
25 SeroVital in California and Defendants have sufficient minimum contacts with this
26 State and/or sufficiently avail themselves of the markets in this State through their
27 promotion, sales, distribution and marketing within this State, including this

1 District, to render the exercise of jurisdiction by this Court permissible.

2 7. Venue is proper in this Court pursuant to 28 U.S.C. §§1391 (a) and (b)
3 because a substantial part of the events or omissions giving rise to Plaintiff's claims
4 occurred while she resided in this judicial district. Venue is also proper under 18
5 U.S.C. §1965(a) because Defendants transact substantial business in this District.

6 **PARTIES**

7 8. Plaintiff Serena Kwan is a citizen of California and resides in San
8 Francisco, California. In or around May 2014, Plaintiff purchased one box of
9 SeroVital online from SanMedica (serovital.com). Prior to purchasing the Product,
10 Plaintiff was exposed to and saw an advertisement in Shape magazine promoting
11 the Product as having the ability to increase HGH level by 682% resulting in
12 numerous health benefits, such as a more youthful appearance, increased energy,
13 and faster metabolism and also recalls having heard about the Product from the Dr.
14 Oz Show. After being exposed to these advertisements, Plaintiff Kwan went online
15 to purchase the Product. While on the website, Plaintiff Kwan read the
16 representations regarding the Product, including those representations appearing on
17 the Product label, which reaffirmed the claims she saw in the magazine
18 advertisement – that the Product is “clinically tested” to provide a “682% mean
19 increase in HGH levels,” which is associated with “youthful skin integrity, lean
20 musculature, elevated energy production, [and] adipose tissue distribution.”
21 Relying on these claims, Plaintiff Kwan purchased the Product. The SeroVital
22 product Plaintiff purchased has not been clinically tested to provide the represented
23 “youthful skin integrity, lean musculature, elevated energy production, [and]
24 adipose tissue distribution” and the sole study on which the “682% MEAN
25 INCREASE IN HGH LEVELS” representation is based does not constitute credible
26 scientific support for the claim. In fact, there is absolutely no support from any
27 credible scientific source that any of the ingredients in SeroVital, alone or in
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1 combination, in the dosages in the Product, provide the represented growth
2 hormone benefits. As a result, Plaintiff suffered injury in fact and lost money. Had
3 Plaintiff known the truth about Defendants' misrepresentations and omissions, she
4 would not have purchased SeroVital.

5 9. Defendant SanMedica International, LLC is an entity organized and
6 existing under the laws of Utah with its principal place of business at 5742 West
7 Harold Gatty Drive, Salt Lake City, Utah, 84116. SanMedica manufactures,
8 distributes, markets and sells SeroVital to consumers nationwide and created the
9 deceptive growth hormone benefit representations, which it caused to be
10 disseminated to consumers nationwide, including in California.

11 10. Defendant Sierra Research Group, LLC is a Utah limited liability
12 company with its principal place of business at 5742 West Harold Gatty Drive, Salt
13 Lake City, Utah, 84116. Sierra Research Group developed the proprietary amino
14 acid compound; licensed it to SanMedica to manufacture, market and sell under the
15 brand name SeroVital; and created the deceptive growth hormone benefit
16 representations, which it caused to be disseminated to consumers nationwide,
17 including in California.

18 11. Plaintiff is informed and believes, and thus alleges, that at all times
19 herein mentioned, each of the Defendants was the agent, employee, representative,
20 partner, joint venturer, and/or alter ego of the other Defendant and, in doing the
21 things alleged herein, was acting within the course and scope of such agency,
22 employment, representation, on behalf of such partnership or joint venture, and/or
23 as such alter ego, with the authority, permission, consent, and/or ratification of the
24 other Defendant.

25 **FACTUAL ALLEGATIONS**

26 ***SeroVital***

27 12. SeroVital is sold online and at third-party retailers. It is marketed as a
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1 product that purportedly raises the body's natural levels of human growth hormone,
2 unlike synthetic HGH injections. A 120 count bottle of SeroVital retails for
3 approximately \$99.00.

4 13. Since the Product's launch, Defendants have consistently conveyed the
5 message to consumers throughout the United States, including California, that
6 SeroVital is "CLINICALLY TESTED" to provide a "682% MEAN INCREASE IN
7 HGH LEVELS" which is associated with "youthful skin integrity, lean
8 musculature, elevated energy production, [and] adipose tissue distribution."
9 Defendants' growth hormone benefit representations are false, misleading and
10 deceptive.

11 14. The sole study purportedly supporting Defendants' HGH benefit
12 representations does not test for "youthful skin integrity, lean musculature, elevated
13 energy production, [and] adipose tissue distribution." The study tests only HGH
14 levels, and even then is riddled with so many flaws that it is completely unreliable.
15 Among other shortcomings, the test subjects' baseline growth hormone levels were
16 much lower than the placebo group at the beginning of the test. Because the test
17 group's HGH levels were so low, it would be expected that they would rise more
18 than the placebo group and any result showing this would have been due to the
19 imbalance between the two groups rather than SeroVital. There were no apparent
20 adjustments made to correct for this imbalance. Further, and significantly,
21 Defendants falsely represent that the study results demonstrated a 682% mean
22 increase in HGH levels. Even if a 682% mean increase in HGH levels was
23 accurately reported despite the multitude of study design flaws, the 682% only
24 represents a within-group result that does not account for the statistical significance
25 of the comparative placebo results and, thereby, necessarily attributes inflated
26 results to SeroVital.

27 15. The SeroVital study results were also flawed due to other confounding
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1 factors for which no controls were put into place by the researchers including, but
2 not limited to, (1) failing to control for the amount of exercise that each subject
3 engaged in, when exercise is known to be a potent stimulator of growth hormones,
4 and (2) failing to control the time of day the placebo and SeroVital blood samples
5 were taken, when it is known that growth hormone is released by the pituitary gland
6 in bursts. If the blood samples were taken at different times of the day when the
7 placebo and SeroVital supplement were ingested, SeroVital ingestion may well
8 have been at those times that growth hormone was being naturally secreted by the
9 anterior pituitary gland; and, in contrast, the placebo ingestion could have been at
10 the time of the day when growth hormone levels were being lowered naturally.
11 Thus, no confidence can be placed on the results without knowing the times of the
12 day when the samples were taken, which the study tellingly omits.

13 16. In addition, Defendants do not rely on a study **report** of the type that
14 would be accepted by any credible, peer-reviewed scientific journal. Rather,
15 Defendants rely on a published study **abstract** and, even then, the “abstract”
16 published on Defendants’ web site materially enhances what is stated in the
17 published abstract. Moreover, published abstracts – as opposed to reports – are not
18 peer-reviewed and are not relied on by the scientific community unless
19 subsequently published in a full final report in a peer reviewed journal. The
20 SeroVital study abstract also does not identify who funded the study – a strong
21 indicator of potential bias.

22 17. Further, although the study abstract reports results of 16 study
23 participants, there is no mention of the total number of participants enrolled in the
24 study. Thus, there is no way to determine whether these 16 participants represent
25 the whole study or whether data was improperly mined to arrive at a desired result.
26 And, no mention is made of what statistical technique was used to analyze the data
27 such that the results cannot be independently confirmed. Finally, and significantly,
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1 Defendants fail to accurately represent the actual study abstract on their website.
2 Defendants falsely represent that the SeroVital study was double-blinded – one
3 indicator of a high quality study – when the published study abstract does not
4 indicate that it was double-blinded – a fact, that if it exists, is routinely mentioned.
5 For all these reasons, and others, the SeroVital study upon which Defendants rely is
6 not competent and reliable evidence of a “682% MEAN INCREASE IN HGH
7 LEVELS” and it is absolutely not evidence of the “associated” benefits it did not
8 even test.

9 18. In addition to the growth hormone benefit misrepresentations,
10 Defendants omit the following material information: there is absolutely no credible
11 scientific evidence that the ingredients in SeroVital, alone or in combination, in the
12 dosages in the Product, provide the represented HGH benefits to anyone. Indeed,
13 the FTC’s stated position is that there is “no reliable evidence to support the claim
14 that these ‘wannabe’ products have the same effect as prescription HGH.” FTC,
15 Anti-Aging Products, *available at* [http://www.consumer.ftc.gov/articles/0118-anti-](http://www.consumer.ftc.gov/articles/0118-anti-aging-products)
16 [aging-products](http://www.consumer.ftc.gov/articles/0118-anti-aging-products) (prescription HGH is given via an injection).

17 19. The popularity of HGH was the result of a New England Journal of
18 Medicine articles published in 1990s that reported positive results from injection
19 HGH. As a result, pricey HGH clinics sprung up, charging upwards of \$1500 per
20 day for HGH injections even though the FDA has not approved HGH injections for
21 anti-aging.

22 20. As for non-injectable HGH, the New England Journal of Medicine
23 published a follow-up editorial about “imposter” HGH products in 2003, warning,
24 “If people are induced to buy a ‘human growth hormone releaser’ on the basis of
25 research published in the Journal, they are being misled.”

26 21. The FDA has also stated that it is unaware of any reliable evidence to
27 support anti-aging claims for over-the-counter pills and sprays that supposedly
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1 contain HGH and the Agency has not approved any such products for anti-aging or
2 any other purpose.

3 22. Each and every consumer who purchases SeroVital is exposed to
4 Defendants' deceptive growth hormone benefit representations because they appear
5 prominently and conspicuously on the front of each box as follows:



19 See Exhibit A for a copy of the complete label.

20 ***The Impact of Defendants' Wrongful Conduct***

21 23. Even though the sole study Defendants rely upon to support their
22 "CLINICALLY TESTED" growth hormone benefit representation does not provide
23 credible scientific support for the "682% MEAN INCREASE IN HGH LEVELS,"
24 and does not even test the represented associated "youthful skin integrity, lean
25 musculature, elevated energy production, [and] adipose tissue distribution,"
26 Defendants continue to unequivocally convey through their advertising and labeling
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1 that it does. They continue to make these growth hormone benefit representations
2 even though there is absolutely no credible scientific evidence that the SeroVital
3 ingredients, alone or in combination, in the dosages found in the Product, provide
4 the represented growth hormone benefits to anyone.

5 24. As the manufacturers and distributors of SeroVital, Defendants possess
6 specialized knowledge regarding the content and effects of the ingredients
7 contained in SeroVital and are in a superior position to learn of the effects—and
8 have learned of the effects—SeroVital has on consumers.

9 25. Specifically, Defendants knew or should have known, but failed to
10 disclose, that the sole purported clinical study on which they rely does not provide
11 credible support for the “682% MEAN INCREASE IN HGH LEVELS;” does not
12 even test the represented associated “youthful skin integrity, lean musculature,
13 elevated energy production, [and] adipose tissue distribution;” and there is
14 absolutely no credible scientific evidence that the SeroVital ingredients, alone or in
15 combination, in the dosages found in the Product, provide the represented growth
16 hormone benefits.

17 26. Plaintiff and Class members have been and will continue to be
18 deceived or misled by Defendants’ deceptive HGH benefit representations.
19 Plaintiff purchased the Product during the Class period and in doing so, read and
20 considered the SeroVital labeling and packaging and based her decision to buy the
21 Product on the HGH benefit representations. Defendants’ HGH benefit
22 representations were a material factor in influencing Plaintiff’s decision to purchase
23 the Product. Plaintiff would not have purchased the Product had she known that
24 Defendants’ HGH benefit representations were false and misleading.

25 27. As a result, Plaintiff and the Class members have been damaged in
26 their purchases of the Product and have been deceived into purchasing a Product
27 that they believed, based on Defendants’ representations, was clinically tested to
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1 increase HGH levels by a mean of 682% and lead to youthful skin integrity, lean
 2 musculature, elevated energy production, and adipose tissue distribution, when, in
 3 fact, there is no credible scientific support that the ingredients in SeroVital, alone or
 4 in combination, in the dosages in the Product, provide the represented HGH
 5 benefits to anyone.

6 28. Defendants, by contrast, have reaped enormous profits from their false
 7 marketing and sale of SeroVital. Defendants charge a substantial premium for
 8 SeroVital over other HGH supplements that do not promise a specific HGH level
 9 and associated benefits—let alone a mean HGH increase of 682%.

10 **CLASS DEFINITION AND ALLEGATIONS**

11 29. Plaintiff brings this action on behalf of herself and all other similarly
 12 situated Class members pursuant to Rule 23(a), b(2) and b(3) of the Federal Rules
 13 of Civil Procedure and seeks certification of the following Class against Defendants
 14 for violations of California state laws and/or similar laws in other states:

15 **Multi-State Class Action**

16 All Consumers who, within the applicable statute of
 17 limitations period, purchased SeroVital in California and
 18 states with similar laws.

19 Excluded from this class are Defendants and their
 20 officers, directors, and employees and those who
 21 purchased SeroVital for re-sale.

22 30. In the alternative, Plaintiff seeks certification of the following Class:

23 **California-Only Class**

24 All consumers who, within the applicable statute of
 25 limitations period, purchased SeroVital in California.

26 Excluded from this Class are Defendants and their
 27 officers, directors and employees and those who
 28 purchased SeroVital for the purpose of re-sale.

1
2 31. **Numerosity.** The members of the Class are so numerous that joinder
3 of all members of the Class is impracticable. Plaintiff is informed and believes that
4 the proposed Class contains thousands of purchasers of SeroVital who have been
5 damaged by Defendants' conduct as alleged herein. The precise number of Class
6 members is unknown to Plaintiff. However, the proposed Class is ascertainable.

7 32. **Existence and Predominance of Common Questions of Law and**
8 **Fact.** This action involves common questions of law and fact, which predominate
9 over any questions affecting individual Class members. These common legal and
10 factual questions include, but are not limited to, the following:

11 (a) whether the claims discussed above are true, or are misleading,
12 or objectively reasonably likely to deceive;

13 (b) whether Defendants' alleged conduct violates public policy;

14 (c) whether the alleged conduct constitutes violations of the laws
15 asserted;

16 (d) whether Defendants engaged in false or misleading advertising;
17 and

18 (e) whether Plaintiff and Class members are entitled to other
19 appropriate remedies, including corrective advertising and injunctive relief.

20 33. **Typicality.** Plaintiff's claims are typical of the claims of the members
21 of the Class because, *inter alia*, all Class members were injured through the
22 uniform misconduct described above and were subject to Defendants' deceptive
23 HGH benefit representations that accompanied each and every box of SeroVital.
24 Plaintiff is advancing the same claims and legal theories on behalf of herself and all
25 members of the Class.

26 34. **Adequacy of Representation.** Plaintiff will fairly and adequately
27 protect the interests of the members of the Class. Plaintiff has retained counsel

1 experienced in complex consumer class action litigation, and Plaintiff intends to
2 prosecute this action vigorously. Plaintiff has no adverse or antagonistic interests
3 to those of the Class.

4 35. ***Superiority.*** A class action is superior to all other available means for
5 the fair and efficient adjudication of this controversy. The damages or other
6 financial detriment suffered by individual Class members is relatively small
7 compared to the burden and expense that would be entailed by individual litigation
8 of their claims against Defendants. It would thus be virtually impossible for
9 Plaintiff and Class members, on an individual basis, to obtain effective redress for
10 the wrongs done to them. Furthermore, even if Class members could afford such
11 individualized litigation, the court system could not. Individualized litigation
12 would create the danger of inconsistent or contradictory judgments arising from the
13 same set of facts. Individualized litigation would also increase the delay and
14 expense to all parties and the court system from the issues raised by this action. By
15 contrast, the class action device provides the benefits of adjudication of these issues
16 in a single proceeding, economies of scale, and comprehensive supervision by a
17 single court, and presents no unusual management difficulties under the
18 circumstances here.

19 36. Plaintiff seeks preliminary and permanent injunctive and equitable
20 relief on behalf of the entire Class, on grounds generally applicable to the entire
21 Class, to enjoin and prevent Defendants from engaging in the acts described, and
22 requiring Defendants to provide full restitution to Plaintiff and Class members.

23 37. Unless a Class is certified, Defendants will retain monies received as a
24 result of their conduct that were taken from Plaintiff and Class members. Unless a
25 Class-wide injunction is issued, Defendants will continue to commit the violations
26 alleged, and the members of the Class and the general public will continue to be
27 deceived.

38. Defendants have acted and refused to act on grounds generally applicable to the Class, making appropriate final injunctive relief with respect to the Class as a whole.

COUNT I

Violation of Business & Professions Code §17200, *et seq.* (Applicable to the Multi-State or California-only Class)

39. Plaintiff repeats and re-alleges the allegations contained in the paragraphs above, as if fully set forth herein.

40. Plaintiff brings this claim individually and on behalf of the Class.

41. As alleged herein, Plaintiff has suffered injury in fact and lost money or property as a result of Defendants' conduct because she purchased SeroVital in reliance on Defendants' claim that the Product was clinically tested to increase HGH levels by a mean of 682% and would lead to youthful skin integrity, lean musculature, elevated energy production, and adipose tissue distribution when, in fact, there is no credible scientific support that the ingredients in SeroVital, alone or in combination, in the dosages in the Product, provide the represented benefits to anyone.

42. The Unfair Competition Law, Business & Professions Code §17200, *et seq.* ("UCL"), and similar laws in other states, prohibits any "unlawful," "fraudulent" or "unfair" business act or practice and any false or misleading advertising.

43. In the course of conducting business, Defendants committed unlawful business practices by, *inter alia*, making the HGH benefit representations (which also constitutes advertising within the meaning of §17200) and omissions of material facts, as set forth more fully herein, and violating Civil Code §§1572, 1573, 1709, 1711, 1770(a)(5), (7), (9) and (16) and Business & Professions Code §§17200, *et seq.*, 17500, *et seq.*, and the common law. Plaintiff and the Class

1 reserve the right to allege other violations of law, which constitute other unlawful
2 business acts or practices. Such conduct is ongoing and continues to this date.

3 44. In the course of conducting business, Defendants committed “unfair”
4 business practices by, *inter alia*, making the HGH benefit representations (which
5 also constitutes advertising within the meaning of §17200) and omissions of
6 material facts regarding SeroVital in their advertising campaign, including the
7 Product’s packaging, as set forth more fully herein. There is no societal benefit
8 from false advertising, only harm. Plaintiff and other Class members paid for HGH
9 benefits supported by clinical testing, which they did not receive. While Plaintiff
10 and Class members were harmed, Defendants were unjustly enriched by their false
11 representations and omissions. Because the utility of Defendants’ conduct (zero) is
12 outweighed by the gravity of the harm Plaintiff and Class members suffered,
13 Defendants’ conduct is “unfair” having offended an established public policy.
14 Further, Defendants engaged in immoral, unethical, oppressive, and unscrupulous
15 activities that are substantially injurious to consumers.

16 45. Further, as stated in this Complaint, Plaintiff alleges violations of
17 consumer protection, unfair competition and truth-in-advertising laws resulting in
18 harm to consumers. Defendants’ acts and omissions also violate and offend the
19 public policy against engaging in false and misleading advertising, unfair
20 competition and deceptive conduct towards consumers. This conduct constitutes
21 violations of the unfair prong of Business & Professions Code §17200, et seq.

22 46. There were reasonably available alternatives to further Defendants’
23 legitimate business interests, other than the conduct described herein.

24 47. Business & Professions Code §17200, et seq., also prohibits any
25 “fraudulent business act or practice.”

26 48. In the course of conducting business, Defendants committed
27 “fraudulent business acts or practices” by, *inter alia*, making the HGH benefit
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1 representations (which also constitutes advertising within the meaning of §17200)
2 and omissions of material facts regarding SeroVital in their advertising campaign,
3 including the Product's packaging, as set forth more fully herein.

4 49. Defendants misrepresented on each and every Product package that the
5 Product is "CLINICALLY TESTED" to provide a "682% MEAN INCREASE IN
6 HGH LEVELS" associated with "youthful skin integrity, lean musculature,
7 elevated energy production, [and] adipose tissue distribution" when, in fact, the
8 clinically tested representation is false and there is absolutely no credible scientific
9 evidence that the SeroVital ingredients, alone or in combination, in the dosages
10 found in the Product, provide the represented growth hormone benefits.

11 50. Defendants' actions, claims, omissions and misleading statements, as
12 more fully set forth above, were also false, misleading and/or likely to deceive the
13 consuming public within the meaning of Business & Professions Code §17200, et
14 seq.

15 51. Plaintiff and other members of the Class have in fact been deceived as
16 a result of their reliance on Defendants' material representations and omissions,
17 which are described above. This reliance has caused harm to Plaintiff and other
18 members of the Class who each purchased Defendants' SeroVital product. Plaintiff
19 and the other Class members have suffered injury in fact and lost money as a result
20 of these unlawful, unfair, and fraudulent practices.

21 52. Defendants knew, or should have known, that their material
22 representations and omissions would be likely to deceive the consuming public and
23 result in consumers purchasing SeroVital and, indeed, intended to deceive
24 consumers.

25 53. As a result of their deception, Defendants have been able to reap unjust
26 revenue and profit.

27 54. Unless restrained and enjoined, Defendants will continue to engage in
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1 the above-described conduct. Accordingly, injunctive relief is appropriate

2 55. Plaintiff, on behalf of herself, all others similarly situated, and the
3 general public, seeks restitution of all money obtained from Plaintiff and the
4 members of the Class collected as a result of unfair competition, an injunction
5 prohibiting Defendants from continuing such practices, corrective advertising and
6 all other relief this Court deems appropriate, consistent with Business &
7 Professions Code §17203.

8
9 **COUNT II**
10 **Violations of the Consumers Legal Remedies Act –**
11 **Civil Code §1750 *et seq.***
12 **(Applicable to the Multi-State or California-only Class)**

13 56. Plaintiff repeats and re-alleges the allegations contained in the
14 paragraphs above, as if fully set forth herein.

15 57. Plaintiff brings this claim individually and on behalf of the Class.

16 58. This cause of action is brought pursuant to the Consumers Legal
17 Remedies Act, California Civil Code §1750, *et seq.* (the “Act”) and similar laws in
18 other states.

19 59. Plaintiff is a consumer as defined by California Civil Code §1761(d).
20 Defendants’ SeroVital is a “good” within the meaning of the Act.

21 60. Defendants violated and continue to violate the Act by engaging in the
22 following practices proscribed by California Civil Code §1770(a) in transactions
23 with Plaintiff and the Class which were intended to result in, and did result in, the
24 sale of SeroVital:

25 (5) Representing that [SeroVital has] . . . approval, characteristics, . . .
26 uses [and] benefits . . . which [it does] not have

27 * * *

28 (7) Representing that [SeroVital is] of a particular standard, quality or

grade . . . if [it is] of another.

* * *

(9) Advertising goods . . . with intent not to sell them as advertised.

* * *

(16) Representing that [SeroVital has] been supplied in accordance with a previous representation when [it has] not.

61. Defendants violated the Act by representing and failing to disclose material facts on the SeroVital labeling and packaging and associated advertising, as described above, when they knew, or should have known, that the representations were false and misleading and that the omissions were of material facts they were obligated to disclose.

62. Pursuant to California Civil Code §1782(d), Plaintiff and the Class seek a Court order enjoining the above-described wrongful acts and practices of Defendants and for restitution and disgorgement.

63. Pursuant to §1782 of the Act, Plaintiff notified Defendants in writing by certified mail of the particular violations of §1770 of the Act and demanded that Defendants rectify the problems associated with the actions detailed above and give notice to all affected consumers of Defendants' intent to so act. Copies of the letters are attached hereto as Exhibit B.

64. If Defendants fail to rectify or agree to rectify the problems associated with the actions detailed above and give notice to all affected consumers within 30 days of the date of written notice pursuant to §1782 of the Act, Plaintiff will amend this Complaint to add claims for actual, punitive and statutory damages, as appropriate.

65. Defendants' conduct is fraudulent, wanton and malicious.

66. Pursuant to §1780(d) of the Act, attached hereto as Exhibit C is the affidavit showing that this action has been commenced in the proper forum.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for a judgment:

- A. Certifying the Class as requested herein;
- B. Awarding restitution and disgorgement of Defendants' revenues to Plaintiff and the proposed Class members;
- C. Awarding injunctive relief as permitted by law or equity, including: enjoining Defendants from continuing the unlawful practices as set forth herein;
- D. Ordering Defendants to engage in a corrective advertising campaign;
- E. Awarding attorneys' fees and costs; and
- F. Providing such further relief as may be just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial of her claims by jury to the extent authorized by law.

Dated: July 21, 2014

BONNETT, FAIRBOURN, FRIEDMAN
& BALINT, P.C.

/s/ Patricia N. Syverson

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